

FIRST REGULAR SESSION

SENATE BILL NO. 235

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR WHEELER.

Read 1st time January 26, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

0395S.01I

AN ACT

To amend chapter 334, RSMo, by adding thereto one new section relating to joint negotiations of physicians.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 334, RSMo, is amended by adding thereto one new section, to be known as section 334.300, to read as follows:

334.300. 1. As used in this section the following terms mean:

(1) "Carrier", an insurance company, health service corporation, hospital service corporation, medical service corporation, or health maintenance organization which is authorized to issue health benefits plans in this state;

(2) "Covered person", a person on whose behalf a carrier offers health benefits, is obligated to pay benefits, or provides services pursuant to the plan;

(3) "Covered service", a health care service provided to a covered person under a health benefits plan for which the carrier is obligated to pay benefits or provide services;

(4) "Health benefits plan", a plan which pays or provides hospital and medical expense benefits for covered services, and is delivered or issued for delivery in this state by or through a carrier. For the purposes of this section, health benefits plan shall not include the following plans, policies, or contracts: Medicare supplement coverage and risk contracts, accident only, specified disease or other limited benefit, credit, disability, long-term care, CHAMPUS supplement coverage, coverage arising out of a workers' compensation or similar

law, automobile medical payment insurance, personal injury protection insurance issued pursuant to chapter 303, RSMo, dental or vision care coverage only, or hospital expense or confinement indemnity coverage only;

(5) "Joint negotiation representative", a representative selected by two or more independent physicians to engage in joint negotiations with a carrier on their behalf;

(6) "Physician", a person who is currently licensed to practice medicine and surgery by the state pursuant to this chapter;

(7) "Utilization management", a system for reviewing the appropriate and efficient allocation of health care services under a health benefits plan in accordance with specific guidelines, for the purpose of determining whether, or to what extent, a health care service that has been provided or is proposed to be provided to a covered person is to be covered under the health benefits plan.

2. Two or more independent physicians who are practicing in the service area of a carrier may jointly negotiate with a carrier and engage in related joint activity, as provided in this section, regarding non-fee-related matters which may affect patient care, including, but not limited to, any of the following:

(1) The definition of medical necessity and other conditions of coverage;

(2) Utilization management criteria and procedures;

(3) Clinical practice guidelines;

(4) Preventive care and other medical management policies;

(5) Patient referral standards and procedures, including, but not limited to, those applicable to out-of-network referrals;

(6) Drug formularies and standards and procedures for prescribing off-formulary drugs;

(7) Quality assurance programs;

(8) Respective physician and carrier liability for the treatment or lack of treatment of covered persons;

(9) The methods and timing of payments;

(10) Other administrative procedures, including, but not limited to, eligibility verification systems and claim documentation requirements for covered persons;

(11) Credentialing standards and procedures for the selection, retention, and termination of participating physicians;

(12) Mechanisms for resolving disputes between the carrier and physicians, including, but not limited to, the appeals process for utilization management and credentialing determinations;

(13) The health benefits plans sold or administered by the carrier in which the physicians are required to participate;

(14) The formulation and application of reimbursement methodology;

(15) The terms and conditions of physician contracts, including, but not limited to, all products clauses, and the duration and renewal provisions of the contract; and

(16) The inclusion or alteration of a contractual term or condition, except when the inclusion or alteration is required by a federal or state regulation concerning that term or condition; however, the restriction shall not limit a physician's rights to jointly petition the federal or state government, as applicable, to change the regulation.

3. (1) Upon a finding by the attorney general, in consultation with the directors of the department of insurance and the department of health and senior services, that the carrier has substantial market power in its service area and that any of the terms or conditions of the contract with the carrier pose an actual or potential threat to the quality and availability of patient care among covered persons, two or more independent physicians who are practicing in the service area of a carrier may jointly negotiate with the carrier and engage in related joint activity, as provided in this section regarding fees and fee-related matters, including, but not limited to, any of the following:

(a) The amount of payment or the methodology for determining the payment for a health care service, including but not limited to, cost-of-living increases;

(b) The conversion factor for a resource-based relative value scale or similar reimbursement methodology for health care services;

(c) The amount of any discount on the price of a health care service;

(d) The procedure code or other description of a health care service covered by a payment and the appropriate grouping of the

procedure codes;

(e) The amount of a bonus related to the provision of health care services or a withholding from the payment due for a health care service; and

(f) The amount of any other component of the reimbursement methodology for a health care service.

(2) The department of insurance, in consultation with the department of health and senior services, shall have the authority to collect and investigate such information as it reasonably believes is necessary to determine, on an annual basis:

(a) The average number of covered lives and geographical distribution of covered lives per quarter per county for every carrier in the state; and

(b) The impact of the provisions of this section on average physician fees in the state.

The department of insurance shall provide this information to the attorney general on an annual basis.

(3) The attorney general shall make the determination of what constitutes substantial market power for the purposes of subdivision (1) of this subsection.

4. The exercise of joint negotiation rights by two or more independent physicians who are practicing in the service area of a carrier pursuant to this section shall conform to the following criteria:

(1) The physicians may communicate with each other concerning any contractual term or condition to be negotiated with the carrier, provided that communications relating to fees and fee-related matter shall not commence until a petition for joint negotiation pursuant to subsection 6 of this section is submitted to and approved by the attorney general;

(2) The physicians may communicate with the joint negotiation representative authorized to negotiate on their behalf with the carrier concerning any contractual term or condition;

(3) The joint negotiation representative shall be the sole party authorized to negotiate with the carrier on behalf of the physicians as a group;

(4) The physicians may, at the option of each physician, agree to

be bound by the terms and conditions negotiated by the joint negotiation representative; and

(5) When communicating or negotiating with a joint negotiation representative, a carrier may offer different contractual terms or conditions to, or may contract with, individual independent physicians.

5. The provisions of this section shall not apply to a health benefits plan which is certified by the director of the department of health and senior services to the attorney general as providing covered services exclusively or primarily to persons who are eligible for public medical assistance under chapter 208, RSMo.

6. A person or entity which proposes to act as a joint negotiation representative shall satisfy the following requirements:

(1) Before entering into negotiations with a carrier on behalf of two or more independent physicians, the joint negotiation representative shall submit to the attorney general, for his approval pursuant to subsection 7 of this section, on a form and in a manner prescribed by the attorney general, a petition which identifies:

(a) The representative's name and business address;

(b) The names and business addresses of each physician who will be represented by the identified representative;

(c) The ratio of the physicians requesting joint representation to the total number of physicians who are practicing within the geographic service area of the carrier;

(d) The carrier with which the representative proposes to enter into negotiations on behalf of the identified physicians;

(e) The intended subject matter of the proposed negotiations with the identified carrier;

(f) The representative's plan of operation and procedures to ensure compliance with the provisions of this section;

(g) The anticipated effect of the proposed joint negotiations on the quality and availability of health care among covered persons;

(h) The anticipated benefits of a contract between the identified physicians and carrier;

(i) Such other data, information, and documents as the petitioners desire to submit in support of their petition; and

(j) Such other data, information, and documents as the attorney

general deems necessary.

The joint negotiation representative, upon submitting the petition, shall pay a fee to the attorney general in an amount, as determined by the attorney general, which shall be reasonable and necessary to cover the costs associated with carrying out the provisions of this section.

(2) After the joint negotiation representative and the carrier identified pursuant to subdivision (1) of this subsection have reached an agreement on the contractual terms or conditions that were the subject matter of their negotiations, the joint negotiation representative shall submit to the attorney general, for his approval in accordance with the provisions of subsection 7 of this section, a copy of the proposed contract between the physicians identified pursuant to subdivision (1) of this subsection and the carrier, as well as any plan of action which the joint negotiation representative and the carrier may formally agree to for the purpose of implementing the terms and conditions of the contract.

(3) Within fourteen days after either party notifies the other party of its decision to decline or terminate negotiations entered into pursuant to this section, or after the date that a joint negotiation representative requests that a carrier enter into such negotiations to which request the plan fails to respond, the joint negotiation representative shall report to the attorney general that the negotiations have ended, on a form and in a manner to be prescribed by the attorney general. The joint negotiation representative may resume negotiations with the carrier no later than sixty days after reporting to the attorney general that the negotiations have ended, on the basis of the petition submitted to the attorney general pursuant to subdivision (1) of this subsection and approved by the attorney general in accordance with the provisions of subsection 7 of this section. After that date, the joint negotiation representative shall be required to submit a new petition and pay an additional fee to the attorney general pursuant to subdivision (1) of this subsection, in order to engage in negotiations with the carrier under this section.

7. (1) The attorney general shall provide written approval or disapproval of a petition or a proposed contract furnished by a joint negotiation representative pursuant to subsection 6 of this section no later than thirty days after receipt of the petition or proposed contract,

as applicable. If the attorney general fails to provide written approval or disapproval within this time period, the joint negotiation representative may petition a court of competent jurisdiction for an order to require the attorney general to take such action. For good cause shown, the court may grant the attorney general additional time to approve or disapprove the petition or proposed contract.

(2) A joint negotiation representative shall not engage in negotiations with a carrier over any contractual term or condition unless the petition furnished by the joint negotiation representative has been approved in writing by the attorney general, nor shall a proposed contract between two or more independent physicians and a carrier be implemented unless the attorney general has approved the contract.

(3) The attorney general shall approve a petition or a proposed contract furnished by a joint negotiation representative pursuant to subsection 6 of this section if the attorney general determines that the petition or proposed contract demonstrates that the benefits which are likely to result from the proposed joint negotiations over a contractual term or condition or the proposed contract, as applicable, outweigh the disadvantages attributable to a reduction in competition that may result from the proposed joint negotiations. If the attorney general approves a petition or a proposed contract, he shall make written findings to this effect. If the attorney general disapproves the petition or the proposed contract, he shall forward a written explanation of any deficiencies therein to the joint negotiation representative along with a statement of the specific remedial measures by which those deficiencies may be corrected.

(4) In making his determination, the attorney general shall consider:

(a) Physician distribution by specialty and its effect on competition in the geographic service area of the carrier;

(b) The market power of the carrier and the goal of restoring or maintaining competitive balance in the market for health care services;

(c) Protections for access to quality patient care; and

(d) The potential for the escalation of the cost of providing health care services.

(5) The attorney general's written approval of a petition which is

furnished by a joint negotiation representative under subsection 6 of this section shall be effective for all subsequent negotiations between the joint negotiation representative and the identified carrier, subject to the provisions of subdivision (3) of subsection 6 of this section.

(6) In the case of a petition submitted pursuant to subdivision (1) of subsection 6 of this section, the attorney general shall notify the carrier of the petition and provide the carrier with the opportunity to submit written comments within a specified time frame that does not extend beyond the date by which the attorney general is required to act on the petition.

8. (1) Within thirty days from the mailing by the attorney general of a notice of disapproval of a petition submitted under subdivision (6) of this subsection, the petitioners may make a written application to the attorney general for a hearing.

(2) Upon receipt of a timely written application for a hearing, the attorney general shall schedule and conduct a hearing. The hearing shall be held within thirty days of the application unless the petitioner seeks an extension.

(3) The sole parties with respect to any petition under subsection 6 of this section shall be the petitioners, and notwithstanding any other provision of law to the contrary, the attorney general shall not be required to treat any other person as a party and no other person shall be entitled to appeal the attorney general's determination.

9. All information, including documents and copies thereof, obtained by or disclosed to the attorney general or any other person in a petition under subsection 6 of this section, shall be treated as confidential and proprietary and shall not be made public or otherwise disclosed by the attorney general or any other person without the written consent of the petitioners to whom the information pertains.

10. (1) A carrier identified in an application approved by the attorney general under subsection 6 of this section shall not refuse to meet at reasonable times and confer in good faith with a joint negotiation representative authorized to conduct negotiations with the identified carrier, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

(2) If a carrier fails to comply with the obligations set forth in

subdivision (1) of this subsection, the joint negotiation representative may petition a court of competent jurisdiction for an order to require the carrier to meet at reasonable times and negotiate in good faith. Upon issuance of such an order, the court may require the carrier to pay the costs of the proceedings, including attorneys' fees, incurred by the other party.

11. (1) The provisions of this section shall not be construed to:

(a) Permit two or more physicians to jointly engage in a coordinated cessation, reduction, or limitation of the health care services which they provide;

(b) Permit two or more physicians to meet or communicate in order to jointly negotiate a requirement that at least one of the physicians, as a condition of participation with a carrier, be allowed to participate in all of the products offered by the carrier;

(c) Permit two or more physicians to jointly negotiate with a carrier to exclude, limit, or otherwise restrict a non-physician health care provider from participating in the carrier's health benefits plan based substantially on the fact that the health care provider is not a physician, unless that exclusion, limitation, or restriction is otherwise permitted by law;

(d) Prohibit or restrict activity by physicians that is sanctioned under federal or state law or subject such activity to the requirements of this section;

(e) Affect governmental approval of, or otherwise restrict activity by, physicians that is not prohibited under federal antitrust law; or

(f) Require approval of physician contract terms to the extent that the terms are exempt from state regulation under Section 514(a) of the "Employee Retirement Income Security Act of 1974," P.L. 93-406 (29 U.S.C. s. I 144(a)).

(2) Prior to entering into negotiations with a carrier on behalf of two or more independent physicians over a contractual term or condition, a joint negotiation representative shall notify the physicians in writing of the provisions of this section and advise them as to the potential for legal action against physicians who violate federal antitrust law.

12. The attorney general, in consultation with the directors of the

department of insurance and the department of health and senior services, shall report to the governor and the general assembly no later than August 28, 2008, on the implementation of this section. The report shall include the number of petitions submitted for approval to engage in joint negotiations and the outcome of the petitions and the negotiations, an assessment of the effect the joint negotiations provided for in this section has had in restoring the competitive balance in the market for health care services and in protecting access to quality patient care, an assessment of the impact this section has had on health insurance premiums in the state, and such other information that the attorney general deems appropriate. The report shall also include the attorney general's recommendations as to whether the provisions of this section shall be expanded to include other types of health care professionals and facilities.

13. The attorney general, in consultation with the directors of the department of insurance and the department of health and senior services and chapter 536, RSMo, shall adopt rules and regulations to effectuate the purposes of this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2005, shall be invalid and void.